

**BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION**

IN RE:       Five Oaks Dev. Group                                 )  
              Dist. 5, Map 72, Control Map 72,                 ) Sevier County  
              Parcels 59.04 & 59.05, S.I. 000                    )  
              Commercial Property                                )  
              Tax Year 2006   )

**INITIAL DECISION AND ORDER**

**Statement of the Case**

The subject property is presently valued in the aggregate at \$76,121,300 as follows:

**Parcel 59.04**

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$10,150,000	\$54,191,900	\$64,341,900	\$25,736,760

**Parcel 59.05**

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$3,248,000	\$8,531,400	\$11,779,400	\$4,711,760

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on March 27, 2007 in Sevierville, Tennessee. The taxpayer was represented by registered agent Cameron Moore. The assessor of property, Johnny King, represented himself and was assisted by staff appraisers Chris Parrott and Randy Watts.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Subject property is commonly known as the Tanger Five Oaks Outlet Center located at 1645 Parkway in Sevierville, Tennessee. Subject property consists of two parcels containing a total of 39.64 acres and 419,038 square feet of leaseable area. According to the assessor's records, parcel 59.04 consists of 4.64 acres of land and improvements containing a total of 65,441 square feet of base area. Parcel 59.05, in turn, contains 35 acres and improvements containing a total of 357,455 square feet of base area.<sup>1</sup>

The taxpayer contended that subject property should be valued at \$50,842,000. In support of this position, Mr. Moore introduced into evidence a report summarizing cost, market and income approaches which he maintained support value indications of \$44,206,750, \$50,184,000 and \$55,146,500 respectively. Mr. Moore placed greatest weight on the market approach and secondary emphasis on the income approach in his correlation.

The assessor contended that subject property should be valued at a minimum of \$76,121,300. In support of this position, Mr. Parrott introduced an income approach he

<sup>1</sup> The parties are in agreement that the two parcels contain a total of 419,038 square feet of leaseable area.



asserted supports value indications of \$85,945,231 or \$103,855,700 depending upon whether the ground lease is treated as an operating expense. Mr. Parrott's analysis also included copies of the property record cards which are the basis for the current appraised value and for all practical purpose constitute a cost approach.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 50 and 62. (12th ed. 2001). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 597-603.

The value to be determined in the present case is market value. A generally accepted definition of market value for ad valorem tax purposes is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. *Id.* at 21-22.

In view of the definition of market value, the income-producing nature of the subject property and the age of subject property, generally accepted appraising principles would indicate that the market and income approaches have greater relevance and should normally be given greater weight than the cost approach in the correlation of value indicators.

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should remain valued at \$76,121,300 based upon the presumption of correctness attaching to the decision of the Sevier County Board of Equalization. As will be discussed below, the administrative judge finds that Mr. Moore's analysis is incomplete and contains a number of errors which when viewed collectively require rejection of the report.

Since the taxpayer is appealing from the determination of the Sevier County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).



The administrative judge finds that subject property consists of two parcels both of which were appealed by Mr. Moore. Respectfully, it appears that Mr. Moore appraised only parcel 59.05 except in the context of the income approach. The administrative judge would initially observe that both the cover page of Mr. Moore's report and the identification of the property at page 5 of his report refer to only parcel 59.05. Moreover, the real estate tax overview at page 8 of Mr. Moore's report indicates subject center was constructed in phases from 1992-2000. Similarly, Mr. Moore's cost approach at pages 19 and 20 of his report reflects actual construction costs through only 2000.

The administrative judge finds the assessor's records indicate that the improvements on parcel 59.05 were indeed constructed between 1992 and 2000. However, the same records also indicate that the improvements on parcel 59.04 were constructed in 2001 and 2003. The improvements on parcel 59.04 are clearly not addressed in Mr. Moore's cost approach.

The administrative judge finds the fact Mr. Moore appraised only parcel 59.05 is also evident from his treatment of the land. Mr. Moore's analysis assumes throughout its entirety that subject development contains a total of 37 acres. As previously noted, the assessor's records (which were not challenged) indicate parcels 59.04 and 59.05 contain 4.64 acres and 35 acres respectively.

It appears Mr. Moore erroneously assumed that subject property consists of a total of 37 acres because of a notation on the card for parcel 59.05 that 37 acres were "calculated." This notation, of course, refers to only parcel 59.05 and has nothing to do with the 4.64 acres located on parcel 59.04. It appears that the other 2 acres referenced as calculated acreage on parcel 59.05 are accounted for through special interests.<sup>2</sup> Thus, Mr. Moore's analysis omits the 4.64 acres associated with parcel 59.04.

The administrative judge finds that Mr. Moore's cost approach does not constitute a cost approach as that term is generally understood in the appraisal community. The administrative judge finds that Mr. Moore did not purport to calculate the value of subject acreage as of January 1, 2006 or the reproduction or replacement cost of the improvements as of that date. Instead, Mr. Moore simply listed the actual costs reported by the taxpayer for the various construction costs incurred through 2000. The administrative judge finds that the costs were not trended to January 1, 2006 and omit the improvements on parcel 59.04. Accordingly, the administrative judge finds that Mr. Moore's cost approach lacks probative value.

The administrative judge finds that Mr. Moore's market approach must also be rejected as a basis of valuation. The administrative judge finds that this portion of the report

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<sup>2</sup> The Chop House is assessed on special interest 001 and includes 1 acre. It is unclear how the other acre has been assessed. In any event, the taxpayer has not been assessed for that acre.



simply consists of a brief summary of 12 sales located throughout the country. Although the report states that the comparables were adjusted, no adjustment grid or the like was included in the report. Moreover, it stands to reason that any such adjustments could not be accurate if the acreage and improvements omitted in the cost approach were also overlooked in the market approach.

The administrative judge finds that Mr. Moore’s income approach properly reflects 419,038 square feet of leaseable area and therefore accounts for the entire center. However, the administrative judge finds that it too contains a significant error. In particular, Mr. Moore assumed an effective tax rate of 1.83%. The administrative judge finds that Mr. Parrott properly utilized an effective tax rate of 0.66% given a 40% assessment level, a tax rate of \$1.65 per \$100 of assessed value, and an appraisal ratio of 100%. The administrative judge finds that the effective tax rate is calculated by multiplying the level of assessment by the tax rate. ( $.40 \times .0165 = .0066$ ) See International Association of Assessing Officers, *Property Assessment Valuation* at 24 (2<sup>nd</sup> ed. 1996).

Given the multitude of problems summarized above, the administrative judge finds it unnecessary to address the remaining areas of disagreement between Messrs. Moore and Parrott in their respective income approaches. The administrative judge finds that the cumulative effect of these deficiencies is such that Mr. Moore’s analysis must be rejected in its entirety.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2006:

<u>Parcel 59.04</u>			
<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$10,150,000	\$54,191,900	\$64,341,900	\$25,736,760
<u>Parcel 59.05</u>			
<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$3,248,000	\$8,531,400	\$11,779,400	\$4,711,760

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization.

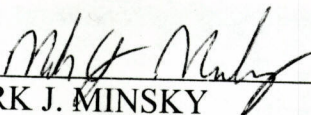


Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 17th day of April, 2007.

  
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MARK J. MINSKY  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Cameron A. Moore  
Johnny D. King, Assessor of Property